



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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December 24, 2013

To Interested Parties:

**Notice of Proposed Regulatory Action
The State Board of Equalization Proposes to Adopt Amendments to
California Code of Regulations, Title 18,
Section 1705, *Relief From Liability***

On December 17, 2013, the State Board of Equalization (Board) held a public hearing regarding the adoption of the proposed amendments to California Code of Regulations, title 18, section (Regulations) 1705, *Relief From Liability*. During the public hearing, the Board was informed that Board staff made a minor error in the text of the proposed amendments to Regulation 1705 published on the Board's website and made available to the public during the notice and comment period. Specifically, staff inadvertently failed to show that, during the August 13, 2013, Business Taxes Committee (BTC) meeting, the Board approved amendments replacing the phrase "that person" with the phrase "those persons" at the end of the second paragraph in subdivision (a) of the regulation, as shown in the agenda for the BTC meeting attached to Formal Issue Paper 13-006 and exhibit 2 to Formal Issue Paper 13-006.

As a result, during the December 17, 2013, public hearing, the Board authorized staff to make the text of the proposed amendments to Regulation 1705 consistent with the text of the proposed amendments to Regulation 1705 that the Board approved on August 13, 2013, by replacing the phrase "that person" with the phrase "those persons" at the end of the second paragraph in subdivision (a) of the regulation. The Board also directed staff to make the text of the proposed amendments to Regulation 1705, with the change clearly indicated, available to the public for at least 15 days, as required by Government Code section 11346.8, subdivision (c).

Enclosed Text

Enclosed is a revised underscore and strikeout version of the text of the proposed amendments to Regulation 1705 with the change the Board authorized on December 17, 2013, clearly indicated. The text proposed to be deleted from and added to the original text of the proposed amendments to subdivision (a) of Regulation 1705 is shown in double strikeout and double underline, respectively.

Additional Comments Regarding Proposed Amendments

In accordance with Government Code section 11346.8, subdivision (c), the revised version of the text of the proposed amendments to Regulation 1705 is being placed in the rulemaking file and mailed to interested parties who commented orally or in writing, or who asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, CA 95814.

The Board will discuss and may potentially adopt the revised version of the text of the proposed amendments to Regulation 1705 during its January 16-17, 2014, Board meeting in Sacramento, California. The specific agenda for the January 16-17, 2014, Board meeting will be available on the Board's Website at www.boe.ca.gov at 5:00 p.m. on January 3, 2014.

Any interested person may appear during the Board's discussion of the revised version of the text of the proposed amendments to Regulation 1705 during the January 16-17, 2014, Board meeting and present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments for the Board's consideration. In addition, any interested person may also submit written comments regarding the Board's proposed adoption of the revised version of the text of the proposed amendments to Regulations 1705. The written comment period closes at 9:30 a.m. on January 16, 2014, or as soon thereafter as the Board commences its discussion of the revised version of the text of the proposed amendments to Regulation 1705 during the January 16-17, 2014, Board meeting.

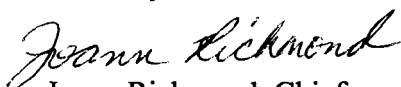
Written comments received by Mr. Rick Bennion, at the postal address, email address, or fax number provided below, prior to the close of the written comment period will be submitted to and considered by the Board before the Board decides whether to adopt the revised version of the text of the proposed amendments to Regulation 1705. Furthermore, any written comments received prior to the end of the written comment period must be responded to in the final statement of reasons required by Government Code section 11346.9.

Questions regarding the substance of the revised version of the text of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the January 16-17, 2014, Board meeting, inquiries concerning the proposed administrative action, and requests for notice of the January 16-17, 2014, Board meeting should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80 I 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Interested persons may also subscribe to receive notice of all the Board's meetings via email or the United States Postal Service on the Board's website at www.boe.ca.gov/agenda/

Sincerely,

A handwritten signature in cursive script that reads "Joann Richmond".

Joann Richmond, Chief
Board Proceedings Division

JR:reb

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1705**

1705. Relief From Liability.

(a) In General. A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

- (1) Written advice given by the Board under the conditions set forth in subdivision (b) below, or
- (2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or
- (3) Written advice given by the Board in a prior audit ~~of that person~~ under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to those persons~~that person~~.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) Advice Provided in a Written Communication.

- (1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person's use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

- (A) The defined population of the purchases that will be included in the reporting method;
- (B) The percentage of purchases of the defined population that is subject to tax;
- (C) The length of time the writing shall remain in effect;
- (D) The definition of a significant or material change that will require rescinding the approved reporting method; and
- (E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

(c) Written Advice Provided in a Prior Audit. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or has a common majority shareholder with the audited person, and

(3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.

(B) Shared accounting staff or an outside firm who maintains books and records and prepares sales and use tax returns.

(C) Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

(d) Annotations and Legal Rulings of Counsel. Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) Trade or Industry Associations or Franchisors. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.

For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6596, Revenue and Taxation Code.